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DEPT. OF TRANSPORTATION
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February 10, 2001

U.S. Department of Transportation
Dockets Management Facility
Room PL-401
400 Seventh Street SW
Washington, DC 20590

Re: Docket No. FMCSA-2000-7017

Safety Requirements for Operators of Small Passenger-Carrying Commercial Motor Vehicles
Used in Interstate Commerce-Request for Comments on Proposed Rule
DEADLINE FOR COMMENTS-APRIL 11, 2001

To whom it may concern:

I am writing to you, in response to the call for comments published in the Federal Register on January 11, 2001, at 66 FR 2767. As I understand the proposed rule, the Federal Motor Carrier Safety Administration (FMCSA or the Agency) is proposing to amend the Federal Motor Carrier Safety Regulations encompassed in 49 CFR Parts 385, 390, and 398, to require that operators and drivers of Commercial Motor Vehicles (CMVs) with a capacity of 9-15 passengers (including the driver) be subject to the same safety requirements that are imposed on other motor coach operations. This means that the vehicles would be subject to the same inspection, maintenance, and repair regulations as the larger CMVs, and drivers would be subject to the same regulations of driving time as the drivers of the large coaches. While I support the decision to extend the safety regulations to smaller capacity CMVs, I feel that these regulations do not go far enough in three areas:

1. The proposed regulations would exempt; those operators that are not directly compensated for their services.
2. The proposed regulations would exempt those operators that operate at a distance no greater than 75 air miles (86.3 statute miles).
3. The proposed regulations would exempt drivers of these CMVs from having commercial

driver licenses. The drivers would also be exempt from drug and alcohol testing regulations.

When Congress created the FMCSA in 1999, it did so because of a finding that the rate and severity of crashes involving motor carriers was unacceptable, and too few motor carriers were undergoing safety reviews. 113 Stat 1748 §3(1)(4). The stated purpose for the Act was to reduce the number and severity of crashes through more CMV and operator inspections. 113 Stat 1748 §4 (2). As the remainder of my comment will explain, I believe that these exemptions will excuse a significant number of operators and drivers from the safety net that Congress mandated when it included 9-15 passenger vans in the definition of CMVs.

1. OPERATORS DIRECTLY COMPENSATED

A commercial motor vehicle (CMV) is defined statutorily as a self-propelled vehicle used on the highways in interstate commerce to transport passengers or property if the vehicle is designed or used to transport more than 8 passengers *for compensation*.. 49 U.S.C. 31132(1)(B). *For compensation* is not defined by the statute. However, the FMCSA as well as the Federal Highway Administration have previously ruled that “for compensation” is synonymous with “for-hire”. 62 FR 16370, 16407. The agencies have also determined any business entity that assesses a fee, directly or indirectly, for the transportation of passengers is operating as a for-hire carrier. It is clear that the Agency has the authority to regulate 9-15 passenger CMV’s whether the operators are paid directly for their services or indirectly, yet for some reason the Agency is proposing that the rules in question only be applied to operators that assess a fee “directly” for the transportation of passengers. 66 FR 2769. This would exempt operators who operate so called “courtesy vans”, such as car rental companies at the airport, off airport long term parking lots, and complimentary hotel shuttles. While these operators do not directly charge for transportation, the fee is indirectly built into the cost of the car rental, parking, or the hotel room.

From my own personal perspective, living in the Atlanta metropolitan area, and as a frequent user of the Atlanta airport, I can attest that by excluding these small CMVs from the proposed regulations, the Agency is ignoring potential safety hazards. I frequently use off airport long term parking and ride the courtesy vans to the terminal. These parking lots are used by passengers involved in interstate travel. Some of these parking lots are located a few miles from the airport, and the courtesy vans must travel on the interstate highways to bring the passengers to the terminal.

On many occasions I have had to endure riding in poorly maintained vans. Doors and windows did not open or close properly, heat or air conditioning was not working. I can guess about the condition of the brakes and steering.

The particular parking operator that I most frequently use has approximately 10 vans for shuttling passengers between the parking lot and the terminal, and there are approximately 10 other similar operations working the Atlanta Airport. Potentially there may be as many as 100 CMVs doing this type of work at this one location. These numbers do not include the numerous rental car vans and hotel courtesy vans operating in the area. Of course, not all of these vehicles are operating in a substandard fashion at any one time, but as the numbers suggest, by exempting this class of CMV from the regulations, the potential exists that a significant number of safety violations will be missed.

While I understand that these examples only involve transportation totally within the state of Georgia, the statute authorizes the Agency to regulate motor carrier employers engaged in a business *affecting* interstate commerce. 49 U.S.C. § 31132(3)(A). The operators of parking shuttles, rental car vans, and hotel courtesy vans are *affecting* interstate commerce. The Atlanta airport is the major airport in the Southeast. The passengers riding these courtesy shuttles are participating in interstate travel. The CMVs are operating over the Interstate Highways. Many of the passengers will drive from the rental car agencies or parking lots to places in Alabama, Tennessee and South Carolina. It is clear to me that anything that affects the passengers of the CMVs has an affect on interstate travel.

2. 75 AIR MILE THRESHOLD

In order to implement its mandate from Congress, the Agency has proposed that the safety regulations apply only to operators of small CMVs if the distance of a trip is above a 75 air mile (86.3 statute miles) threshold. This number was chosen based on an analysis of accident data for small CMVs. The accident data was provided by the National Highway Transportation Safety Administration (NHTSA).

It is my contention that the Agency has unnecessarily limited the application of the rule by putting in the 75 mile threshold, and has left a significant number of vehicles and operators exempt from the safety regulations. For example, in my home area of Atlanta there are a number operators

that offer transportation in small CMVs, for interstate travelers, from the airport to suburban hotels. Since these operators receive a direct fee they would not be exempt under the proposed indirect compensation exemption [see section 1 above]. However, these carriers would be exempt under this 75 mile rule. It is not unusual for these carriers to travel 30, 40, or even 65 miles from the airport to neighboring cities such as, Gainesville, Lawrenceville, and Athens. Even suburban centers such as Norcross, Alpharetta and Peachtree City are 20 to 30 miles from the airport. All of this travel is being done over the Interstate Highways.

Without explanation or statutory support the Agency has adopted a belief that Congress intended to limit the Act to distances comparable to inter city motor coach operations. The 75 mile limit is arbitrary. Based on the Agency's own published interpretation of the NHTSA data, the drivers in 63% of the fatal accidents involving small CMVs traveled more than 75 miles. 66 FR 2771. This means that 37% of the fatal crashes occurred under the 75 mile threshold.

It is my opinion that the 37% is a significant number of fatal accidents. If the proposed 75 mile threshold is approved and the numbers remain consistent, then 37% of the fatal accidents that involve small CMV's would occur in vehicles that are not subject to the safety regulations.

Again, I realize that these examples are totally within the state of Georgia, but as I explained in section 1, the statute authorizes the Agency to regulate employers engaged in a business *affecting* interstate commerce. 49 U.S.C. § 31132(3)(A).

3. COMMERCIAL LICENSE AND SUBSTANCE ABUSE TESTING

The proposed rule exempts the drivers of these CMVs from the requirement for a commercial drivers license and from the requirements for mandatory drug and alcohol testing. It should be obvious that this makes no sense, but I understand that the Agency does not have the statutory authority to extend these programs to the 9-15 passenger CMVs.

When Congress passed the MCSIA in 1999 it amended Chapter 311 of Title 49 of the United States Code to include 9-15 passenger vans within the definition of CMVs thus making these small CMVs subject to safety regulations to be propagated by the Agency. Unfortunately, Chapter 311 only authorizes the Agency and the Department of Transportation to make rules in regard to vehicle safety.

Chapter 313, on the other hand, authorizes the Department to make rules that relate to

driver safety. The programs for Commercial Licensing and Drug and Alcohol Testing are found at 49 U.S.C. 31302 and 49 U.S.C. 31306 respectively. Yet , for some unexplained reason Congress did not amend the definitions in §31301 to include smaller CMVs.

From my reading of the Motor Carrier Safety Improvement Act of 1999, it is clear that Congress was very concerned about the safety records of these small CMV's. 113 Stat 1748 § 212. I am sure that it was an oversight when Congress failed to amend § 31301 to extend the reach of the Commercial License and Drug Testing programs to small CMVs. I think that the Director of the Agency, and Secretary of Transportation should report this discrepancy to Congress, so that Congress can extend the reach of the Commercial Licensing program and the Drug Testing program to the small CMVs..

Sincerely yours,

A handwritten signature in black ink, appearing to read 'A. J. Pomerance', with a stylized flourish at the end.

Alan Jay Pomerance